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Attorneys for Defendant  
CAL-WESTERN RECONVEYANCE CORPORATION

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JUAN & CLARA FRANCO,

Plaintiffs,

v.

CAL-WESTERN RECONVEYANCE  
CORP.,

Defendant.

Case No. 2:12-cv-04388-PA-E  
Assigned to Hon. Percy Anderson

**DEFENDANT CAL-WESTERN  
RECONVEYANCE  
CORPORATION'S  
DECLARATION OF NON-  
MONETARY STATUS**

*[Civil Code 2924l]*

Complaint Filed: May 21, 2012  
Trial Date: Not Yet Set

I, Yvonne Wheeler, declare as follows:

1. If sworn as a witness I could and would competently testify to the following facts of my own personal knowledge.

2. I am the Assistant Vice President of Cal-Western Reconveyance Corporation ("Cal-Western"). At all relevant times herein, I was employed by Cal-Western and I am authorized by Cal-Western to make this declaration.

3. On May 21, 2012, Plaintiffs, Juan Franco and Clara Franco ("Plaintiffs"), filed a Complaint ("Complaint") in the United States District Court for the Central District of California for (1) Violation of 15 U.S.C. §§ 1692(e)-(f) and (2) Negligence. The Complaint arises out of a loan involving the borrowers and the lender. Cal-Western is simply the foreclosure trustee ("Trustee"), with the

1 power to foreclose on the property that arises from the Deed of Trust securing the  
2 loan to Plaintiffs.

3 4. During the time frames alleged by Plaintiffs in this lawsuit, I was one  
4 of the custodians of Cal-Western's foreclosure records (hereinafter "business  
5 records") as they pertain to the subject non-judicial foreclosure under the Deed of  
6 Trust executed by trustors Juan G. Franco and Clara G. Franco encumbering  
7 property located at 2110 Manitou Avenue, Los Angeles, California 90031. I have  
8 personally reviewed Cal-Western's business records and as to the following facts, I  
9 know them to be true of my own personal knowledge or I have gained knowledge  
10 of the facts in the regular course of business from Cal-Western's business records.

11 a. On January 11, 2012, the beneficiary referred this matter to Cal-  
12 Western to commence non-judicial foreclosure of the Property. No  
13 written correspondence was sent by Cal-Western to the Plaintiffs prior  
14 to the referral.

15 5. Based on my review of Plaintiffs' Complaint, it is my reasonable  
16 belief that Cal-Western has been named in this action solely in its capacity as  
17 Trustee, and not arising out of any wrongful acts or omissions on its part in the  
18 performance of its duties as Trustee. The basis for my reasonable knowledge or  
19 belief set forth above is that Cal-Western has not been involved in any way with  
20 the property which is the subject of this lawsuit outside of its capacity as Trustee,  
21 and has no interest in the property, except to be named as the Trustee under the  
22 deed of trust encumbering the property by way of Substitution of Trustee.

23 6. I am not aware of any evidence produced to date by Plaintiffs, or of  
24 any facts, documents, or testimony tending to suggest that Cal-Western engaged in  
25 any misconduct in connection with the performance of its duties as Trustee.  
26 Further, foreclosure by the Trustee does not constitute debt collection under the  
27 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* Izenberg v. ETS  
28 Services, LLC, 589 F.Supp.2d 1193, 1199 (C.D.Cal.2008).

1           7. Pursuant to Civil Code 2924(b), a foreclosure trustee incurs no  
2 liability for reliance in good faith on information provided in good faith by the  
3 beneficiary regarding the nature and amount of the default under the secured  
4 obligation. Thus, Cal-Western was entitled to rely on the beneficiary's  
5 representations of the nature and amount of default.

6           8. The Complaint makes no credible allegations that Cal-Western failed  
7 to perform any of its duties as a Trustee, and a review of Cal-Western's file  
8 confirms that Cal-Western complied with the applicable foreclosure statutes. To  
9 wit:

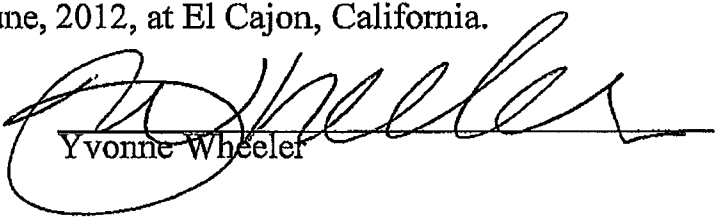
10           a. The Substitution of Trustee was properly recorded pursuant to Civil  
11 Code § 2934a(a)(1), and once recorded, constitutes conclusive  
12 evidence of Cal-Western's authority to act as Trustee pursuant to Civil  
13 Code § 2934a(d). A true and correct copy of the recorded  
14 Substitution of Trustee is attached hereto as **Exhibit A**.

15           b. The Notice of Default was properly recorded pursuant to Civil Code §  
16 2924(a). A true and correct copy of the recorded Notice of Default is  
17 attached hereto as **Exhibit B**.

18           9. Given the foregoing facts, Cal-Western hereby agrees to be bound by  
19 whatever non-monetary Order or Judgment that this Court issues with regard to the  
20 Deed of Trust which is the subject of this lawsuit.

21           I declare under penalty of perjury under the laws of the State of California  
22 that the foregoing is true and correct.

23           Executed this 13th day of June, 2012, at El Cajon, California.

24   
25 Yvonne Wheeler  
26  
27  
28

# **EXHIBIT A**

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:



CAL-WESTERN RECONVEYANCE CORPORATION  
525 EAST MAIN STREET  
P.O. BOX 22004  
EL CAJON, CA 92022-9004

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
**SUBSTITUTION OF TRUSTEE**

T.S. NO.:1353380-10

WHEREAS, JUAN G. FRANCO AND CLARA G. FRANCO, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, INVESTORS TITLE CORPORATION, A CALIFORNIA CORPORATION was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR T.J. FINANCIAL, INC., ITS SUCCESSOR AND ASSIGNS was the original Beneficiary under that certain Deed of Trust dated September 07, 2007 and recorded on September 18, 2007 as Instrument No. 20072140288, in book XX, page XX of Official Records of LOS ANGELES County, California, and

WHEREAS, the undersigned is present Beneficiary under said Deed of Trust, and WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in the place and stead of present Trustee thereunder, in the manner in said Deed of Trust provided.

NOW, THEREFORE, the undersigned hereby substitutes, CAL-WESTERN RECONVEYANCE CORPORATION a California Corporation whose address is 525 EAST MAIN STREET, P.O. BOX 22004, EL CAJON, CA 92022-9004 as Trustee under said Deed of Trust. Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: April 9, 2012

WELLS FARGO BANK, NA

A handwritten signature of Patricia A. Siewert.

Patricia A. Siewert

Vice President of Loan Documentation

State of North Carolina

County of Wake

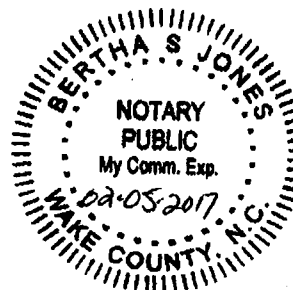
On April 9, 2012, before me, Bertha S. Jones, a Notary Public, personally appeared Patricia A. Siewert, Vice President of Loan Documentation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of said State that the foregoing paragraph is true and correct.

(Seal)

WITNESS my hand and official seal

Signature

A handwritten signature of Bertha S. Jones.



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**20120598407**



Pages:  
0002

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

04/23/12 AT 08:00AM

FEES:	18.00
TAXES:	0.00
OTHER:	0.00
PAID:	18.00



LEADSHEET



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SEQ:  
09

DAR - Title Company (Hard Copy)



THIS FORM IS NOT TO BE DUPLICATED

# **EXHIBIT B**

Recording Requested By  
When Recorded Mail To

Cal-Western Reconveyance Corp.  
P.O. Box 22004  
525 East Main Street  
El Cajon CA 92022-9004



Trustee Sale No. 1353380-10  
APN: 5204-007-009

Space Above This Line For Recorder's Use

Ref: FRANCO, JUAN

Property Address: 2110 MANITOU AVENUE &, 302 SOUTH AVENUE 21 LOS ANGELES CA 90031

## NOTICE OF DEFAULT

### IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION**, and you may have legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$31,934.80 as of April 18, 2012, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

WELLS FARGO BANK, NA

C/O CAL-WESTERN RECONVEYANCE CORPORATION  
525 EAST MAIN STREET  
P.O. BOX 22004  
EL CAJON 9004 CA 92022-9004  
(619)590-9200

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

100E



Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. Remember, **YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

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**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST**

**NOTICE IS HEREBY GIVEN:**

**CAL-WESTERN RECONVEYANCE CORPORATION** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a deed of trust dated September 07, 2007 executed by

**JUAN G. FRANCO AND CLARA G. FRANCO, HUSBAND AND WIFE AS JOINT TENANTS** as trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR T.J. FINANCIAL, INC., ITS SUCCESSORS AND ASSIGNS** as beneficiary, recorded as document 20072140288 on September 18, 2007 in book XX page XX official records in the office of County Recorder of LOS ANGELES County, California, describing land therein as:

**COMPLETELY DESCRIBED IN SAID DEED OF TRUST,**

said obligations including a promissory note for the principal sum of \$406,000.00.

That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

Failure to pay the monthly payment due July 1, 2011 of principal, interest and impounds and subsequent installments due thereafter; plus late charges; together with all subsequent sums advanced by beneficiary pursuant to the terms and conditions of said deed of trust.

That by reason thereof the present beneficiary under such Deed of Trust has deposited with said trustee such Deed of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

See attached SB1137 Declaration.

T.S. 1353380-10

Dated: April 18, 2012

**CAL-WESTERN RECONVEYANCE CORPORATION**

Signature By

  
Monica Chavez

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**NOTICE OF DEFAULT DECLARATION**  
PURSUANT TO CALIFORNIA CIVIL CODE 2923.5

Wells Fargo Bank, N.A.  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Borrower: JUAN G FRANCO  
Co Borrower: CLARA G FRANCO  
Property Address: 2110 MANITOU AVENUE & 302 SOUTH AVENUE 21  
LOS ANGELES CA 90031

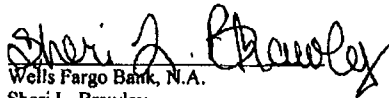
The undersigned mortgagee, beneficiary, or their authorized agent (collectively, the "Beneficiary") represent and declares that the requirements of CA Civil Code 2923.5 have been met. This Declaration is required for any residential owner occupied property in which the loan was originated between January 1, 2003 and December 31, 2007. Non-owner occupied and vacant properties are exempt from the requirements of CA Civil Code 2923.5.

The requirement indicated by "X" was met by the Beneficiary:

- The Beneficiary has made contact with the borrower pursuant to CA Civil Code 2923(a)(2). Contact with the borrower was made in person or by telephone to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure.
- x Due Diligence to contact the borrower was exercised pursuant to CA Civil Code 2923.5(g)(2) by the Beneficiary.
- The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, Trustee, beneficiary, or authorized agent pursuant to CA Civil Code 2923.5(h)(1).
- The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries pursuant to CA Civil Code 2923.5(h)(2).
- The borrower has filed for bankruptcy and the proceedings have not been finalized pursuant to CA Civil Code 2923.5(h)(3).
- An Exemption as identified in 2923.5 (h) & (i) applies: The loan did not originate between January 1, 2003 and December 31, 2007 or the property is deemed Non-owner occupied or vacant.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 02/13/12

  
Wells Fargo Bank, N.A.  
Sheri L. Brawley  
VP of Loan Documentation

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**20120598408**



Pages:  
0004

Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

04/23/12 AT 08:00AM

FEES:	24.00
TAXES:	0.00
OTHER:	0.00
PAID:	24.00



LEADSHEET



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DAR - Title Company (Hard Copy)



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**CERTIFICATE OF SERVICE**

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 4375 Jutland Drive, Suite 200, P.O. Box 17935, San Diego, CA 92177-0935.

I hereby certify that on June 13, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

N/A

I further certify that on June 13, 2012, I served the above-described documents by U.S. Mail on the following, who are not registered participants of the CM/ECF System:

Juan Franco  
Clara Franco  
2110 Manitou Avenue  
Los Angeles, CA 90031  
Pro Se Plaintiffs

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of June 2012, at San Diego, California.

  
MEGAN M. WHALEY

2987337.wpd